

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY H. JENSS and DEPARTMENT OF THE TREASURY,  
CUSTOMS SERVICE, Honolulu, HI

*Docket No. 99-564; Submitted on the Record;  
Issued June 9, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about June 20, 1998 causally related to her March 11, 1998 accepted injury

Appellant, then a 73-year-old customs inspection aide, filed a claim for a traumatic injury and for continuation of pay/compensation, alleging that on March 11, 1998 she sustained a back injury while retrieving a declaration card from the floor at the Honolulu International Airport where she worked. She indicated that a woman passenger passed by her and dropped her declaration card on the floor, and when both appellant and the passenger bent down to retrieve it, appellant claimed that she twisted her lower back, which also affected the muscles in her left leg. The Office of Workers' Compensation Programs accepted appellant's March 11, 1998 claim for back strain. She worked intermittently from March 11 until June 20, 1998 when she alleged she suffered a recurrence of disability related to her original back injury on March 11, 1998.

On May 14, 1998 appellant submitted to the Office clinical records dated May 4 and 14, 1998 from Dr. Jane Fyrberg, Board-certified in emergency medicine, which diagnosed appellant with "paralumbal bulges stabli" "LBS" and "semi-L sciatic pain." On May 28, 1998 appellant also submitted a radiology report dated May 4, 1998 where a magnetic resonance imaging (MRI) examination of the lumbar spine reported "grade I spondylolisthesis at L4-5 (approximately 1 CM) with associated marked facet hypertrophy at L4-S1. There are small osteophytes throughout the remainder of the lumbar spine with disc space narrowing and sclerosis at L5-S1. Findings have markedly progressed since prior x-ray of October 9, 1995." The May 4, 1998 report further indicated "mild degenerative changes throughout the lumbar spine, most prominent at L5-S1" and "grade I spondylolisthesis at L4-5 with prominent facet hypertrophy extending from L4-S1. No fracture identified."

On June 5, 1998 the Office received a letter from Dr. Fyrberg dated May 11, 1998 in response to its request for information dated April 30, 1998. She outlined a history of appellant's examination and treatment from March 24 until May 5, 1998 and noted:

“The patient was seen on March 24, 1998 in our occupational health services clinic. At that time we saw her as a 73-year-old female who stated she had bent down to pick up a card at her workplace and experienced severe low back pain. She states that she had a history of a previous back injury approximately 10 years before and has experienced some pain intermittently with that. This has all completely resolved. Her diagnosis after examination was paralumbar muscle strain. She also incidentally had mild left scoliosis. [P]ermanent disability from this injury was not expected other than the disc bulges which may have been preexisting. The patient at this time is back to full duty at her job. Her case has been closed. It is expected, however, that she could have an exacerbation in the future as she is an older patient with disc bulges which can be reinjured very easily. The type of work this patient does definitely contributes to aggravation of preexisting degenerative disc disease. Her work is not the only cause of her current condition, however, it acts as an aggravating force and any lifting or repetitive bending could result in exacerbations of sciatic type pain as this patient does have impingement of two nerve roots L5 and S1.”

On June 29, 1998 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation alleging that between May 26 and June 1, 1998 she experienced back muscle spasms several times throughout the day. She further alleged that on June 20, 1998 she experienced back muscle spasms in her office at work. Appellant further indicated on her claim form that she hurt her back in 1988 while working for customs in the customs mail branch but that she thought nothing of it at the time.

In a letter dated August 26, 1998, the Office advised appellant that in order to substantiate her claim for recurrence of disability due to her accepted injury, additional information should be submitted within 30 days. The Office specifically requested medical records, including clinical notes of all treatment appellant received for her condition since May 11, 1998 when appellant's physician considered her case closed. The Office further requested commentary from appellant's physician as to whether she had recovered from the original disability; whether she had returned to her regular employment; whether there were any lingering symptoms; what factors produced the recurrence; the diagnosis for the recurring condition; whether the initial condition was prone to recurrence and whether there were any precipitating factors capable of causing the condition by itself.

On August 26, 1998 appellant submitted to the Office an interim report taken by Dr. Chuen P. Lau, Board-certified in physical medicine and rehabilitation, dated July 21, 1998 that indicated a lumbosacral spine examination showed moderate tenderness over the left paralumbar muscle region. The report diagnosed appellant with a back strain injury and indicated that Dr. Lau returned appellant to light-duty work on July 27, 1998 for four hours per day. She further submitted to the Office on September 16 and 21, 1998 various physical therapy reports taken during the month of August evidencing treatment.

By decision dated September 28, 1998, the Office denied appellant's claim for a recurrence of disability findings that the medical evidence was insufficient to establish that her condition was caused by the March 11, 1998 employment injury.<sup>1</sup>

The Office further found in its September 28, 1998 decision that the evidence was insufficient to establish a causal relationship between appellant's original injury and her current medical condition because appellant had not been seen for her back strain condition since May 11, 1998 when her case was closed, and because appellant had a preexisting condition of degenerative disc disease with disc bulges at L3-4, L4-5 and S1. The Office determined that appellant had not submitted a medically rationalized opinion from a physician causally relating her current back condition to her March 11, 1998 work injury.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or about June 20, 1998 causally related to her March 11, 1998 accepted injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing on or about June 20, 1998 and her March 11, 1998 original injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is casually related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

At the time of the Office's September 28, 1998 decision the record established that appellant suffered from a preexisting condition of degenerative disc disease with disc bulges at L3-4, L4-5 and S1. The record further established that appellant's low back strain condition, caused by the March 11, 1998 employment injury, had not been evaluated by appellant's treating physician, Dr. Fyrberg, since May 11, 1998 when the physician closed appellant's case after she determined that appellant could perform full duty. Although Dr. Fyrberg noted appellant might experience a future exacerbation of her preexisting degenerative disc disease, this general observation pertains to the possibility of future injury and does not address the causal relationship of how appellant's back condition commencing May 26, 1998 was causally related to her March 11, 1998 injury. Her report, therefore, is not probative on the issue of appellant's claimed recurrence of disability.<sup>4</sup>

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<sup>1</sup> By letter dated October 23, 1998, appellant submitted a request for reconsideration of the September 28, 1998 decision denying compensation benefits and additional medical evidence in support of her request. By decision dated November 18, 1998, the Office denied modification of its September 28, 1998 decision. The Board finds that the decision issued by the Office on November 18, 1998 is null and void, as it was issued while the case was on appeal before the Board on the same issue. *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 795 (1986).

<sup>3</sup> *Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>4</sup> A recurrence of disability is distinguished from a new injury by the criterion that in a recurrence situation no event other than the previous injury accounts for the disability; see *William R. Lance*, 18 ECAB 422, 428 (1967).

Dr. Lau's July 21, 1998 report is also deficient of any medical rationale causally relating appellant's disability commencing May 26, 1998 to the March 11, 1998 employment injury. He simply diagnosed appellant with a back strain injury and indicated that appellant would be restricted to light-duty work.

Consequently, appellant has not met her burden of establishing by submitting substantial, reliable and probative medical evidence that her back condition commencing May 26, 1998 is causally related to her March 11, 1998 employment injury.

The decision of the Office of Workers' Compensation Programs dated September 28, 1998 denying compensation benefits is affirmed.

Dated, Washington, D.C.  
June 9, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member